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11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14

15 DEJON HEMPHILL,) Case No.: 5:24-cv-00825-KK-DTB
16)
17 Plaintiff,) **[DISCOVERY MATTER]**
18)
19 vs.) **STIPULATED PROTECTIVE**
20) **ORDER**
21 COUNTY OF SAN BERNARDINO;)
22 CITY OF SAN BERNARDINO; and)
23 DOES 1-10, inclusive,)
24)
25 Defendants.) **Matter For Determination Before The**
26) **Honorable Kenly Kiya Kato**

27 **TO THE HONORABLE COURT, COME NOW ALL THE PARTIES**
28 **AND JOINTLY STIPULATE AS FOLLOWS:**

1 **1. A. PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
6 enter the following Stipulated Protective Order. The parties acknowledge that this

1 Order does not confer blanket protections on all disclosures or responses to
2 discovery and that the protection it affords from public disclosure and use extends
3 only to the limited information or items that are entitled to confidential treatment
4 under the applicable legal principles. The parties further acknowledge, as set forth in
5 Section 12.3, below, that this Stipulated Protective Order does not entitle them to
6 file confidential information under seal; Civil Local Rule 79-5 sets forth the
7 procedures that must be followed and the standards that will be applied when a party
8 seeks permission from the court to file material under seal.

9 **B. GOOD CAUSE STATEMENT**

10 This action pertains to sensitive and confidential inter-agency documents
11 related to the incident that involved Plaintiff DEJON HEMPHILL (“Plaintiff) and
12 Defendants City of San Bernardino, et.al. (“Defendants,” collectively). This action
13 is likely to involve materials and information that were acquired in confidence by
14 public employees in the course of their duties and have not been officially disclosed
15 or made open or available to the public. Such confidential materials and information
16 consist of, among other things: (1) confidential police personnel files and
17 accompanying materials maintained by the City of San Bernardino Police
18 Department; (2) law enforcement investigative reports and records which may
19 contain personal contact information of third party witnesses; and (3) information
20 otherwise generally unavailable to the public, or which may be privileged or
21 otherwise protected from disclosure under state or federal statutes, court rules, case
22 decisions, or common law. City Defendants contend that individual officers have an
23 interest in protecting their own privacy rights relating to information in their
24 personnel files and other related information including but not limited to internal
25 affairs investigations. Public divulgence of identities of the various law-enforcement
26 officers and civilian witnesses contained therein would violate the aforementioned
27 individual’s rights of privacy and subject them to potential harm, harassment,
28 intimidation or other unwarranted retribution. Further, the administrative

1 investigations as to the underlying alleged incidents are incomplete, ongoing and
2 continuing.

3 Accordingly, to expedite the flow of information, to facilitate the prompt
4 resolution of disputes over confidentiality of discovery materials, to adequately
5 protect information the parties are entitled to keep confidential, to ensure that the
6 parties are permitted reasonable necessary uses of such material in preparation for
7 and in the conduct of trial, to address their handling at the end of the litigation, and
8 serve the ends of justice, a protective order for such information is justified in this
9 matter. It is the intent of the parties that information will not be designated as
10 confidential for tactical reasons and that nothing be so designated without a good
11 faith belief that it has been maintained in a confidential, non-public manner, and
12 there is good cause why it should not be part of the public record of this case.

13 **2. DEFINITIONS**

14 2.1 Action: This pending federal lawsuit in DEJON HEMPHILL, an individual,
15 v. County of San Bernardino, et.al. Case No.5:24-cv-00825-KK-DTBx.

16 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
17 information or items under this Order.

18 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it
19 is generated, stored or maintained) or tangible things that qualify for protection
20 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
21 Cause Statement.

22 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
23 support staff).

24 2.5 Designating Party: a Party or Non-Party that designates information or items
25 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

26 2.6 Disclosure or Discovery Material: all items or information, regardless of the
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1 medium or manner in which it is generated, stored, or maintained (including, among
2 other things, testimony, transcripts, and tangible things), that are produced or
3 generated in disclosures or responses to discovery in this matter.

4 2.7 Expert: a person with specialized knowledge or experience in a matter
5 pertinent to the litigation who has been retained by a Party or its counsel to serve as
6 an expert witness or as a consultant in this Action.

7 2.8 House Counsel: attorneys who are employees of a party to this Action. House
8 Counsel does not include Outside Counsel of Record or any other outside counsel.

9 2.9 Non-Party: any natural person, partnership, corporation, association, or other
10 legal entity not named as a Party to this action.

11 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this
12 Action but are retained to represent or advise a party to this Action and have
13 appeared in this Action on behalf of that party or are affiliated with a law firm which
14 has appeared on behalf of that party and includes support staff.

15 2.11 Party: any party to this Action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and their
17 support staffs).

18 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
19 Material in this Action.

20 2.13 Professional Vendors: persons or entities that provide litigation support
21 services (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)
23 and their employees and subcontractors.

24 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
25 "CONFIDENTIAL."

26 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from
27 a Producing Party.
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1 **3. SCOPE**

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also (1) any information copied or
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or
5 compilations of Protected Material; and (3) any testimony, conversations, or
6 presentations by Parties or their Counsel that might reveal Protected Material. Any
7 use of Protected Material at trial shall be governed by the orders of the trial judge.
8 This Order does not govern the use of Protected Material at trial.

9 **4. DURATION**

10 Even after final disposition of this litigation, the confidentiality obligations
11 imposed by this Order shall remain in effect until a Designating Party agrees
12 otherwise in writing or a court order otherwise directs. Final disposition shall be
13 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
14 or without prejudice; and (2) final judgment herein after the completion and
15 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
16 including the time limits for filing any motions or applications for extension of time
17 pursuant to applicable law.

18 **5. DESIGNATING PROTECTED MATERIAL**

19 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
20 Party or Non-Party that designates information or items for protection under this
21 Order must take care to limit any such designation to specific material that qualifies
22 under the appropriate standards. The Designating Party must designate for
23 protection only those parts of material, documents, items, or oral or written
24 communications that qualify so that other portions of the material, documents,
25 items, or communications for which protection is not warranted are not swept
26 unjustifiably within the ambit of this Order.

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1 Mass, indiscriminate, or routinized designations are prohibited. Designations
2 that are shown to be clearly unjustified or that have been made for an improper
3 purpose (e.g., to unnecessarily encumber the case development process or to impose
4 unnecessary expenses and burdens on other parties) may expose the Designating
5 Party to sanctions.

6 If it comes to a Designating Party's attention that information or items that it
7 designated for protection do not qualify for protection, that Designating Party must
8 promptly notify all other Parties that it is withdrawing the inapplicable designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in this
10 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
11 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
12 under this Order must be clearly so designated before the material is disclosed or
13 produced.

14 Designation in conformity with this Order requires:

15 (a) For information in documentary form (e.g., paper or electronic
16 documents, but excluding transcripts of depositions or other pretrial or trial
17 proceedings), that the Producing Party affix at a minimum, the legend
18 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
19 contains protected material. If only a portion or portions of the material on a page
20 qualifies for protection, the Producing Party also must clearly identify the protected
21 portion(s) (e.g., by making appropriate markings in the margins).

22 A Party or Non-Party that makes original documents available for inspection
23 need not designate them for protection until after the inspecting Party has indicated
24 which documents it would like copied and produced. During the inspection and
25 before the designation, all of the material made available for inspection shall be
26 deemed "CONFIDENTIAL." After the inspecting Party has identified the
27 documents it wants copied and produced, the Producing Party must determine which
28 documents, or portions thereof, qualify for protection under this Order. Then,

1 before producing the specified documents, the Producing Party must affix the
2 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
3 portion or portions of the material on a page qualifies for protection, the Producing
4 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
5 markings in the margins).

6 (b) For testimony given in depositions that the Designating Party identify
7 the Disclosure or Discovery Material on the record, before the close of the
8 deposition all protected testimony.

9 (c) For information produced in some form other than documentary and for
10 any other tangible items, that the Producing Party affix in a prominent place on the
11 exterior of the container or containers in which the information is stored the legend
12 “CONFIDENTIAL.” If only a portion or portions of the information warrants
13 protection, the Producing Party, to the extent practicable, shall identify the protected
14 portion(s).

15 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
16 designate qualified information or items does not, standing alone, waive the
17 Designating Party’s right to secure protection under this Order for such material.
18 Upon timely correction of a designation, the Receiving Party must make reasonable
19 efforts to assure that the material is treated in accordance with the provisions of this
20 Order.

21 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
23 of confidentiality at any time that is consistent with the Court’s Scheduling Order.

24 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
25 process under Local Rule 37.1 et seq.

26 6.3 The burden of persuasion in any such challenge proceeding shall be on the
27 Designating Party. Frivolous challenges, and those made for an improper purpose
28 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may

1 expose the Challenging Party to sanctions. Unless the Designating Party has waived
2 or withdrawn the confidentiality designation, all parties shall continue to afford the
3 material in question the level of protection to which it is entitled under the
4 Producing Party's designation until the Court rules on the challenge.

5 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

6 7.1 Basic Principles. A Receiving Party may use Protected Material that is
7 disclosed or produced by another Party or by a Non-Party in connection with this
8 Action only for prosecuting, defending, or attempting to settle this Action. Such
9 Protected Material may be disclosed only to the categories of persons and under the
10 conditions described in this Order. When the Action has been terminated, a
11 Receiving Party must comply with the provisions of section 13 below (FINAL
12 DISPOSITION).

13 Protected Material must be stored and maintained by a Receiving Party at a
14 location and in a secure manner that ensures that access is limited to the persons
15 authorized under this Order.

16 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
17 otherwise ordered by the court or permitted in writing by the Designating Party, a
18 Receiving Party may disclose any information or item designated
19 "CONFIDENTIAL" only to:

20 (a) The Receiving Party's Outside Counsel of Record in this Action, as
21 well as employees of said Outside Counsel of Record to whom it is reasonably
22 necessary to disclose the information for this Action;

23 (b) The officers, directors, and employees (including House Counsel) of
24 the Receiving Party to whom disclosure is reasonably necessary for this Action;

25 (c) Experts (as defined in this Order) of the Receiving Party to whom
26 disclosure is reasonably necessary for this Action and who have signed the
27 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

28 (d) The court and its personnel;

1 (e) Court reporters and their staff;

2 (f) Professional jury or trial consultants, mock jurors, and Professional
3 Vendors to whom disclosure is reasonably necessary for this Action and who have
4 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

5 (g) The author or recipient of a document containing the information or a
6 custodian or other person who otherwise possessed or knew the information;

7 (h) During their depositions, witnesses, and attorneys for witnesses, in the
8 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
9 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
10 not be permitted to keep any confidential information unless they sign the
11 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
12 agreed by the Designating Party or ordered by the court. Pages of transcribed
13 deposition testimony or exhibits to depositions that reveal Protected Material may
14 be separately bound by the court reporter and may not be disclosed to anyone except
15 as permitted under this Stipulated Protective Order; and

16 (i) Any mediator or settlement officer, and their supporting personnel,
17 mutually agreed upon by any of the parties engaged in settlement discussions.

18 Notwithstanding the aforementioned specified categories of persons and
19 circumstances, all documents designated CONFIDENTIAL and their contents,
20 including and especially, but not limited to, documents and depositions under seal
21 containing the identities of witnesses, employees/personnel and consultants shall
22 expressly be deemed “Attorneys Eyes Only,” meaning its disclosure shall be limited
23 only to counsel for the parties in addition to the aforementioned specified categories
24 of persons and circumstances. However, documents that do not contain the
25 identities of percipient witnesses, such as the autopsy report, shall not be deemed
26 “attorneys eyes only.”

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1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
 2 **PRODUCED IN OTHER LITIGATION**

3 If a Party is served with a subpoena or a court order issued in other litigation
 4 that compels disclosure of any information or items designated in this Action as
 5 “CONFIDENTIAL,” that Party must:

6 (a) Promptly notify in writing the Designating Party. Such notification
 7 shall include a copy of the subpoena or court order;

8 (b) Promptly notify in writing the party who caused the subpoena or order
 9 to issue in the other litigation that some or all of the material covered by the
 10 subpoena or order is subject to this Protective Order. Such notification shall include
 11 a copy of this Stipulated Protective Order; and

12 (c) Cooperate with respect to all reasonable procedures sought to be
 13 pursued by the Designating Party whose Protected Material may be affected. If the
 14 Designating Party timely seeks a protective order, the Party served with the
 15 subpoena or court order shall not produce any information designated in this action
 16 as “CONFIDENTIAL” before a determination by the court from which the
 17 subpoena or order issued, unless the Party has obtained the Designating Party’s
 18 permission. The Designating Party shall bear the burden and expense of seeking
 19 protection in that court of its confidential material and nothing in these provisions
 20 should be construed as authorizing or encouraging a Receiving Party in this Action
 21 to disobey a lawful directive from another court.

22 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
 23 **PRODUCED IN THIS LITIGATION**

24 (a) The terms of this Order are applicable to information produced by a
 25 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
 26 produced by Non-Parties in connection with this litigation is protected by the
 27 remedies and relief provided by this Order. Nothing in these provisions should be
 28 construed as prohibiting a Non-Party from seeking additional protections.

1 (b) In the event that a Party is required, by a valid discovery request, to
2 produce a Non-Party's confidential information in its possession, and the Party is
3 subject to an agreement with the Non-Party not to produce the Non-Party's
4 confidential information, then the Party shall:

5 (1) Promptly notify in writing the Requesting Party and the Non-Party that
6 some or all of the information requested is subject to a confidentiality agreement
7 with a Non-Party;

8 (2) Promptly provide the Non-Party with a copy of the Stipulated
9 Protective Order in this Action, the relevant discovery request(s), and a reasonably
10 specific description of the information requested; and

11 (3) Make the information requested available for inspection by the Non-
12 Party, if requested.

13 (c) If the Non-Party fails to seek a protective order from this court within
14 14 days of receiving the notice and accompanying information, the Receiving Party
15 may produce the Non-Party's confidential information responsive to the discovery
16 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
17 not produce any information in its possession or control that is subject to the
18 confidentiality agreement with the Non-Party before a determination by the court.
19 Absent a court order to the contrary, the Non-Party shall bear the burden and
20 expense of seeking protection in this court of its Protected Material.

21 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

22 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
23 Protected Material to any person or in any circumstance not authorized under this
24 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
25 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
26 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
27 persons to whom unauthorized disclosures were made of all the terms of this Order,
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1 and (d) request such person or persons to execute the “Acknowledgment and
2 Agreement to Be Bound” that is attached hereto as Exhibit A.

3 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
4 **OTHERWISE PROTECTED MATERIAL**

5 When a Producing Party gives notice to Receiving Parties that certain
6 inadvertently produced material is subject to a claim of privilege or other protection,
7 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
8 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
9 may be established in an e-discovery order that provides for production without
10 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar
11 as the parties reach an agreement on the effect of disclosure of a communication or
12 information covered by the attorney-client privilege or work product protection, the
13 parties may incorporate their agreement in the stipulated protective order submitted
14 to the court.

15 **12. MISCELLANEOUS**

16 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
17 to seek its modification by the Court in the future.

18 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
19 Order no Party waives any right it otherwise would have to object to disclosing or
20 producing any information or item on any ground not addressed in this Stipulated
21 Protective Order. Similarly, no Party waives any right to object on any ground to use
22 in evidence of any of the material covered by this Protective Order.

23 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
24 Material must comply with Civil Local Rule 79-5. Protected Material may only be
25 filed under seal pursuant to a court order authorizing the sealing of the specific
26 Protected Material at issue. If a Party's request to file Protected Material under seal
27 is denied by the court, then the Receiving Party may file the information in the
28 public record unless otherwise instructed by the court.

1 **13. FINAL DISPOSITION**

2 After the final disposition of this Action, as defined in paragraph 4, within 60
 3 days of a written request by the Designating Party, each Receiving Party must return
 4 all Protected Material to the Producing Party or destroy such material. As used in
 5 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
 6 summaries, and any other format reproducing or capturing any of the Protected
 7 Material. Whether the Protected Material is returned or destroyed, the Receiving
 8 Party must submit a written certification to the Producing Party (and, if not the same
 9 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
 10 (by category, where appropriate) all the Protected Material that was returned or
 11 destroyed and (2) affirms that the Receiving Party has not retained any copies,
 12 abstracts, compilations, summaries or any other format reproducing or capturing any
 13 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
 14 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
 15 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
 16 reports, attorney work product, and consultant and expert work product, even if such
 17 materials contain Protected Material. Any such archival copies that contain or
 18 constitute Protected Material remain subject to this Protective Order as set forth in
 19 Section 4 (DURATION).

20 14. Any violation of this Order may be punished by any and all appropriate
 21 measures including, without limitation, contempt proceedings and/or monetary
 22 sanctions.

23 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

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1 Respectfully submitted,
2 LAWRENCE BEACH ALLEN & CHOI, PC
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4 Dated: June 5, 2024

By /s/ Aamir Raza
5 PAUL B. BEACH
6 AAMIR RAZA¹
7 Attorneys for Defendant
8 CITY OF SAN BERNARDINO

9 LAW OFFICE OF DALE K. GALIPO

10 Dated: June 5, 2024

By /s/ Hang D. Le
11 DALE K. GALIPO
12 HANG D. LE
13 Attorneys for Plaintiff
14 DEJON HEMPHILL

15 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**
16

17 Dated:

18 HONORABLE DAVID T. BRISTOW
19 UNITED STATES MAGISTRATE JUDGE
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27 ¹ I, Aamir Raza, hereby attest that all the signatories listed, and on whose behalf the
28 filing is submitted, concur in the content of this Stipulation and have authorized its
filing.

EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury
 that I have read in its entirety and understand the Stipulated Protective Order that
 was issued by the United States District Court for the Central District of California
 on [date] in the case of DEJON HEMPHILL, an individual, v. County of San
 Bernardino, et.al. Case No.5:24-cv-00825-KK-DTBx. I agree to comply with and to
 be bound by all the terms of this Stipulated Protective Order and I understand and
 acknowledge that failure to so comply could expose me to sanctions and punishment
 in the nature of contempt. I solemnly promise that I will not disclose in any manner
 any information or item that is subject to this Stipulated Protective Order to any
 person or entity except in strict compliance with the provisions of this Order. I
 further agree to submit to the jurisdiction of the United States District Court for the
 Central District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 Termination of this action. I hereby appoint _____ [print
 or type full name] of _____ [print or
 type full address and telephone number] as my California agent for service of
 process in connection with this action or any proceedings related to enforcement of
 this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____